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In the Supreme Court
of the United States

October Term, 1964

No. 662

OREGON STEVEDORING COMPANY, INC.,
Petitioner,

v.

ITALIA SOCIETA PER AZIONI DI NAVIGAZIONE,
Respondent.

BRIEF OF RESPONDENT ITALIA SOCIETA IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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REASONS WHY PETITION SHOULD NOT BE GRANTED

This Court has previously decided the important question in this case, holding that a stevedore's implied warranty of workmanlike service is breached by the stevedore furnishing defective equipment, regardless of whether or not the stevedore was negligent. 376 U.S. 315 (1964).

The only remaining issue, which involved interpretation of the particular contract between the parties, was not briefed or argued before this Court, and was left for decision by the Court of Appeals. 376 U.S. at p.

324-325. The Court of Appeals, applying ordinary principles of contract interpretation, by unanimous decision interpreted the contract adversely to the stevedore's contentions. Now the stevedore seeks to bring the case before this Court for a second time, upon the issue of contract interpretation.

The question involved does not warrant consideration by this Court. None of the reasons for granting certiorari, set forth in Supreme Court Rule 19(b), apply to this case.

No question of public policy is involved. There is no conflict between the circuits.

The case merely involves interpretation of a particular contract, which is now obsolete, between petitioner stevedore and respondent shipowner. Interpretation of this contract is of no special importance to the industry, for the contract has since been changed by deletion of the clause on which petitioner relies, and it was only one of numerous forms of contract between various shipowners and stevedores.

1. Question presented.

Respondent does not agree with petitioner's statement of the questions presented.

In an effort to get to this Court, petitioner states that a question of public policy is involved;—i.e. whether a stevedore may, by its contract with its shipowner customer, limit its liability for breach of its warranty of workmanlike service. Cf. *Bisso* v. *Inland Waterways Corp.*, 349 U.S. 85.

No such question of policy is involved. The Court of Appeals merely held, upon usual principles of contract interpretation, that the language of the contract fails to show any intention of the parties to limit or negate the stevedore's implied warranty of workmanlike service. Indeed, respondent shipowner, in its brief before the Court of Appeals, stated:

> "Admittedly the parties were free to contract as they chose. The Stevedore's warranty of workmanlike service could have been disclaimed by a meeting of the minds clearly expressed in the contract. But nothing in the contract indicates any such meeting of the minds."[1]

A fairer statement of the only question involved is:

> Does a proper interpretation of this particular contract, construed as a whole, reveal an intent of the parties to negate the stevedore's usual implied warranty of workmanlike service?

2. Interpretation of the contract—Case of no general importance.

As stated, the only question involved is the proper interpretation of this particular contract. The particular contract is now obsolete, since Paragraph VIII (the clause relied upon by the stevedore), and also Paragraph VII, have since been deleted from the current contract between petitioner and respondent.[2] If this Court should

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[1] Supplemental Brief of Appellant, Italia Societa Per Azioni Di Navigazione, filed in the Court of Appeals subsequent to the Supreme Court decision, pp. 6-7.

[2] This information is set forth in Footnote 15, p. 12, of brief amicus curiae in support of the stevedore's contentions filed with its consent in the Court of Appeals by the Pacific Coast Stevedore Association.

undertake to interpret this particular obsolete contract, it would solve no major problem for the industry, for the forms of contract, and language used therein, are many and various. Petitioner states that 92% of the stevedore work on the West Coast is performed pursuant to written contracts, and 79% of the written contracts have "some form of indemnity clause" (Petition p. 4). There were 28 different types of such clauses set forth in a brief filed in the Court of Appeals in support of petitioner's position.[3] Each of the 28 types may contain numerous variations of language. Consequently, it would serve no useful purpose to the shipping industry to interpret the language of this particular obsolete contract.

If the parties to such a stevedoring contract intend to limit the stevedore's obligations, they can easily do so by plain and simple language. The contract in the present case was "prepared and drawn up by respondent (the stevedore petitioner) and presented in a printed form" (Trial Court Finding (4), Tr. 23b).[4] The stevedore could easily have limited its obligations by plain simple language, such as "stevedore will be liable *only* for negligence," or *"solely,"* or *"exclusively"* for negligence. Or language such as "stevedore's obligations hereunder shall in no event extend beyond the use of ordinary and reasonable care." But no such words of limitation are in the contract. The stevedore now seeks to have the contract read as though it contained such lan-

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[3] Amicus Brief of Pacific Coast Stevedore Association.

[4] References to the Transcript are to the Transcript of Record when this case was previously before the Court, No. 82, October Term, 1963 (No. 876, October Term, 1962).

guage.[5] But the Court of Appeals could find no such intent:

> "Nor do we find any clear expression in the contract that it was the intent of the parties to relieve Oregon of such obligation." 336 F.2d at p. 127, Petition Appendix A, p. 14.

The stevedore Petitioner relies on language of the contract providing that the shipowner shall be responsible for injury arising "by reason of the failure of ship's gear and/or equipment" (Petition pp. 5-6). This ignores the basic principle that the contract must be construed as a whole, and ignores the express finding of fact by the District Court.

The contract expressly provided what gear and equipment was to be furnished by each of the contracting parties:

> "II It is understood and mutually agreed by the parties hereto:
>
> A. That the *Stevedoring Company will furnish* all necessary labor and supervision and *all ordinary gear for the performance of the services* described in this contract, including winch drivers and *usual appliances* used for stevedoring; and
>
> B. That the *Steamship Company will furnish suitable booms, winches, blocks, and falls, steam and/or power and lights* and will maintain the same in safe and efficient working condition during the progress of the work." (emphasis supplied) (Tr. 23a).

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[5] Petitioner states that "it *only* agreed to be responsible for negligence" and "the stevedore must be deemed to have consented to be responsible for negligence *only*," Petition p. 7.

As stated in this Court's prior opinion, the defective tent rope "was furnished by Oregon (stevedore Petitioner) pursuant to its obligation to supply ordinary gear . . ." 376 U.S. pp. 317-318. In view of the express provisions of the contract, defining the gear to be furnished by each of the respective parties it is clear that as between shipowner and stevedore, "ship's gear" refers to gear furnished by the shipowner pursuant to the contract, and not to gear furnished by the stevedore.

Furthermore, the District Court made an express finding that the tent rope was the stevedore's gear and equipment.

> "The Seattle hatch tent and tent tie-down rope involved herein were owned, supplied, rigged and exclusively controlled by respondent at all times material. Said tent rope was the respondent's gear and equipment." (Finding 16, Tr. 25).

The Court of Appeals correctly interpreted the contract. 336 F.2d 124 at p. 127, Petition Appendix A, p. 13.

3. No conflict between the circuits.

There is no conflict between the opinion of the Court of Appeals for the Ninth Circuit in the present case, and that of any other court of appeals. Indeed, the Court of Appeals' opinion cites, and is consistent with, *Pettus* v. *Grace Line, Inc.*, 305 F.2d 151 (2d Cir. 1962). See also *Drago* v. *A/S Inger*, 305 F.2d 139 (2d Cir. 1962).

CONCLUSION

It is time for an end to this case, which has already been heard once in this Court and twice in the Court of Appeals.

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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Dated November 20, 1964